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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/478,875 01/07/00 KOHLMAN

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TM02/0905

EXAMINER

GRAVINI, S

ART UNIT

PAPER NUMBER

2162

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09/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/478,875	Applicant(s) Randolph S. KOHLMAN et al.
Examiner Stephen M. Gravini	Art Unit 2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Aug 9, 2001

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-83 is/are pending in the application.

4a) Of the above, claim(s) 1-28 and 47-83 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 29-46 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) Other: _____

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-3, drawn to a treating method combination, classified in class 34, subclass 306.
 - II. Claims 4-21, drawn to an treating method subcombination, classified in class 34, subclass 309.
 - III. Claims 22-28, drawn to a subcombination treatment apparatus, classified in class 34, subclass 61.
 - IV. Claims 29-46, drawn to a treating method subcombination, classified in class 34, subclass 311.
 - V. Claims 47-56, drawn to a treating method subcombination, classified in class 34, subclass 357.
 - VI. Claims 57-58, drawn to a treating method subcombination, classified in class 34, subclass 380.
 - VII. Claims 59-60, drawn to a subcombination treatment apparatus, classified in class 34, subclass 79.
 - VIII. Claims 61-72, drawn to a subcombination treatment apparatus, classified in class 34, subclass 95.
 - IX. Claims 73-83, drawn to a subcombination treatment apparatus, classified in class 34, subclass 107.
2. The inventions are distinct, each from the other because of the following reasons: Inventions of groups I, II, IV, V, & VI and groups III, VII, VIII, & IX are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another materially different apparatus or by hand because the independently claims process/method contains the steps "placing articles to be cleaned in a container through an opening having a closure means," "securing the closure," and "subjecting articles to a tumbling action in the presence of a cleaning agent." These steps are not limitations in the independently claimed apparatus. Since these limitations are independent and distinct from both groups of the above stated inventions, it would be a serious burden on the examiner to distinguish each patentable feature from the current U.S. and foreign classification system.
3. Inventions of group III and groups VII, VIII, and IX are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each

other if they are shown to be separately usable. In the instant case, invention of group III has separate utility such as a two panel bag joined along at least one seam forming rigidifying wall discontinuity. These separate uses (claimed as a two panel single seam bag and rigidifying wall discontinuity) distinguish the invention of group III from groups VII, VIII, and IX since the two panel single seam bag and rigidifying wall discontinuity are not limitations of those independently claimed inventions. Therefore the invention of group III is a separately usable subcombination. See MPEP § 806.05(d).

4. Inventions of group VI and groups I, II, IV, and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of group VI has separate utility such as freshening, removing vapors, gas input/output venting, and kinetic pumping. These separate uses (claimed as freshening, removing vapors, gas input/output venting, and kinetic pumping) distinguish the invention of group VI from groups I, II, IV, and V since the freshening, removing vapors, gas input/output venting, and kinetic pumping are not limitations of the independently claimed invention of groups I, II, IV, and V. Therefore the invention of group II is a separately usable subcombination. See MPEP § 806.05(d).

5. Inventions of group I and groups II, IV, and group V are each related as combination and subcombination. Group I is the combination and groups II, IV, and V are subcombinations of group I. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as independently claimed does not require the particulars of the subcombinations as independently claimed because structural rigidity tumbling promoting (independently claimed in subcombination group II), textile substrate polymer facing (independently claimed in subcombination group IV), the Kawabata friction and stiffness values (independently claimed in subcombination group V) are particulars of the subcombinations that are not required in the combination invention of group I. Because the combination, as independently claimed does not require the particulars of the subcombinations of groups II, IV, and V, each of these groups shows a distinct relationship with each succeeding combination and subcombination. In other words group V is a subcombination of combination group IV, group IV is a subcombination of group II, and group II is a subcombination of group I for the particulars stated. The subcombinations have separate utility such as Kawabata friction and stiffness values (group V), textile substrate polymer facing (group IV), and the structural rigidity tumbling promoting (group II). Each of these independently claimed separate utility features separate the subcombinations such that each subcombination has utility by itself or in other combinations.

6. Inventions of group VII and groups VIII and group IX are each related as combination and subcombination. Group VII is the combination and groups VII and IX are subcombinations of group VII. Inventions in this relationship are distinct if it can be shown that (1) the

combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as independently claimed does not require the particulars of the subcombinations as independently claimed because the greater Kawabata friction values without the independently claimed friction values (independently claimed in subcombination group VIII), the Kawabata maximum friction and stiffness values (independently claimed in subcombination group IX) are particulars of the subcombinations that are not required in the combination invention of group VII. Because the combination, as independently claimed does not require the particulars of the subcombinations of groups VII and IX, each of these groups shows a distinct relationship with each succeeding combination and subcombination. In other words group IX is a subcombination of combination group VII, and group VIII is a subcombination of group VII for the particulars stated. The subcombinations have separate utility such as the greater Kawabata friction values without the independently claimed friction values (group VIII), and the Kawabata maximum friction and stiffness values (group IX). Each of these independently claimed separate utility features separate the subcombinations such that each subcombination has utility by itself or in other combinations.

7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

8. Applicant's election with traverse of group IV claims 29-46 in Paper No. 4 is acknowledged. The traversal is on the grounds that "each group defined by the examiner is classified in Class 34, and that it would not be a serious burden on the examiner to distinguish each patentable feature in the US Classification system." This is not found persuasive because applicants are claiming nine different independent and distinct groups of inventions. As discussed above, each independently claimed invention contains features that distinguish it from the other independently claimed inventions. Currently Class 34 contains over 32,000 patents that have been issued after 1971. Although it may be alleged that it would "not a serious burden on the examiner," the examiner must search the 32,000 patents plus nearly the same amount issued before 1971, including relevant art in Classes 8, 134, and 510, not to mention non-patent

literature, in order to result in an effective search for a thorough examination. Patentably distinguishing these nine different independently claimed inventions among the tremendous volume of prior art patent and non-patent references is a serious burden on the examiner.

The requirement is still deemed proper and is therefore still made FINAL.

Claim Rejections - 35 U.S.C. § 102

9. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Smith (6,036,727). Smith discloses a cleaning process comprising: placing articles to be cleaned into a containment bag through an opening having a closure means, securing the closure means, and subjecting the articles within the bag to a tumbling action in the presence of a cleaning agent, wherein the bag, when empty and with the closure means secured, readily defines an enclosed space having a predetermined three-dimensional shape, the bag having bag walls that contribute to the bag having inherent structural rigidity whereby the enclosed space is maintained in the predetermined shape sufficiently to promote, during the cleaning process, the free tumbling of articles placed in the bag, (please see the second full paragraph page 24 of 27 of applicants' cited reference AA which discusses this inherently equivalent step of a dry cleaning fabric being placed into a bag, then sealing the bag to be rotated in a hot air clothes dryer) wherein the bag walls are comprised of a textile composite, the composite comprising a textile substrate having a polymer facing (please see paragraphs 4-7 of the same page of the same reference which discloses the bag being formed by the co-extrusion of materials from non-porous plastic film, non-woven fabric polyethylene,

polypropylene, polyamide, nylon, or a multiple or layered complex comprising such materials which implicitly includes the claimed bag construction of a textile composite comprising a textile substrate having a polymer facing).

Claim Rejections - 35 U.S.C. § 103

10. Claims 30-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith. Smith discloses the claimed invention, as discussed above, except for the claimed shape, the claimed textile web fibers, and/or the claimed structure, friction, or stiffness values. It would have been an obvious matter of design choice to modify the teachings of Smith, to provide the claimed shape, the claimed textile web fibers, and/or the claimed structure, friction, or stiffness values, since applicant has not disclosed that the claimed shape, the claimed textile web fibers, and/or the claimed structure, friction, or stiffness values solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill and it appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the method of Smith will perform the invention as claimed by the applicant with any shape, textile web fibers, and/or structure/ friction/ stiffness values.

Response to Arguments

11. Applicant's arguments mailed August 7, 2001 have been fully considered but they are not persuasive.

35 USC 102 rejection arguments

Applicants argue that primary reference Smith does not disclose a bag which, when empty and with the closure means secured, readily defines and enclosed space having a predetermined three-dimensional shape, and which has walls that contribute to the bag having inherent structural rigidity whereby the enclosed space is maintained in the predetermined shape sufficiently to promote, during the cleaning process, the free tumbling of articles placed in the bag. Applicants further argue that the primary reference nowhere discusses acceptable or preferred bag *volumes*. Examiner disagrees with applicants' arguments. The bags described in the primary reference ~~a~~ initially discuss two dimensional sizes along with surface area. It is important to note that primary reference Smith explicitly discloses a "sealed bag," "an interior surface," and "a surface area." (please see column 13 of the USPTO published document). Inherently, a sealed bag with an interior surface and a surface area will "when empty and with a closure means secured, readily define an enclosed space having a predetermined three-dimensional shape" as claimed by applicants. To those skilled in the art, a predetermined three-dimensional shape is a shape that has a length dimension in three directions mutually perpendicular to one another. In other words, a length/width/depth bag will inherently have the claimed predetermined three dimensions. Furthermore, applicants also argue that the bag has "walls that contribute to an inherent structural rigidity whereby the enclosed space is maintained in the predetermined shape sufficiently to promote, during the cleaning process, free tumbling of articles placed in the bag." To those skilled in the art, the disclosed process for home dry-cleaning at column 1 of the primary reference, in which an absorbent sheet integrally sealed onto a plastic sheet so that clothing can be

enclosed and tumbled in a spin cycle of a washing machine, inherently performs the claimed free tumbling of articles placed in the bag maintained in a predetermined shape. Also at column 4, primary reference Smith discusses closing a fastening system to form a closed system bag and tumbling the closed system in a rotary clothes dryer so that the dry-cleaning composition contacts the soiled fabric article so as to effectively disperse the soil, which inherently meets the claimed bag wall inherent structural rigidity whereby the enclosed space is maintained in the predetermined shape sufficiently to promote, during the cleaning process, free tumbling of articles placed in the bag, because the tumbling action of a rotary clothes dryer allows soil from clothing contained in a bag to be "tumbled away" from the enclosed clothing while in tumbling contact with the cleaning agent inside the bag which is tumbled by the rotary clothes dryer. As a result, those sections of Smith discuss acceptable or preferred bag volumes. In summary, the prior art expressly and inherently anticipates applicants' claimed invention because single reference Smith discloses the identical invention, in as complete detail as is contained in the claims, and when every element of the claimed invention is literally present, arranged as claimed in the reference.

35 USC 103 rejection arguments

Applicants traverse the rejection on the basis that it is improper to base an obviousness rejection merely upon what one skilled in the art might try, but rather such rejection must be based upon what the available prior art would have lead on skilled in the art to do. The basis for examiner's rejection is not what applicants might try, but rather variations of disclosed shapes, material, structure, friction, or stiffness values from the prior art. Primary reference Smith

discusses shapes, material, structure, friction, and stiffness values but not with the specificity as claimed by the applicants. It would have been obvious to one skilled in the art to specifically claim shapes, material, structure, friction, or stiffness values from the general disclosure of Smith in order to seek patent protection based on what one would have been led to do in light of the prior art. In summary, the prior art provides for an obvious modification such that a design choice obviousness type rejection would be appropriate.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Gravini whose telephone number is (703) 308-7570 and electronic transmission/e-mail address is "steve.gravini@uspto.gov". **If applicants chose to send information by e-mail, please be aware that confidentiality of the electronically transmitted message cannot be assured.** Please see MPEP § 502.01.

Steve Gravini
STEPHEN M. GRAVINI
PRIMARY EXAMINER

smg
September 4, 2001